

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

KENNETH NEWKIRK,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 3:22CV369–HEH
)	
DIRECTOR, DEPT. OF)	
CORRECTIONS)	
)	
Respondent.)	

MEMORANDUM OPINION
(Dismissing Without Prejudice 28 U.S.C. § 2254 Petition)

Kenneth Newkirk, a Virginia state prisoner proceeding *pro se*, filed a petition pursuant to 28 U.S.C. § 2254 (“§ 2254 Petition,” ECF No. 1). The Court dismissed an earlier 28 U.S.C. § 2254 petition filed by Newkirk for failure to exhaust his state court remedies. *See Newkirk v. Lerner*, No. 3:13CV570–HEH, 2013 WL 4811219, at *1 (E.D. Va. Sept. 9, 2013) (“*Newkirk I*”). The Order in *Newkirk I* informed Newkirk:

Before the Court will consider any future habeas petition from Newkirk, he must explain how he has exhausted his state court remedies. Accordingly, Newkirk must attach to the front of any future petition the following statement:
“I have pursued all of my state court remedies for the claims and convictions described herein.” Failure to comply with this directive will result in summary dismissal of the action.

Newkirk I, No. 3:13CV570–HEH (E.D. Va. Sept. 9, 2013) (order dismissing § 2254 petition, ECF No.7 (paragraph number omitted)).

Newkirk’s current § 2254 Petition fails to comply with the Court’s prior Order. Additionally, on his current § 2254 Petition, in response to one of the questions that

asked whether he had exhausted his state remedies, Newkirk stated: “I do not have to exhaust state court remedies before filing a writ of habeas corpus.” (ECF No. 1 at 8 (capitalization corrected).) Accordingly, the action will be dismissed without prejudice. Newkirk’s outstanding motions (ECF Nos. 4, 6–9) will be denied. A certificate of appealability will be denied.

An appropriate Order shall accompany this Memorandum Opinion.



/s/

Henry E. Hudson
Senior United States District Judge

Date: June 21, 2022
Richmond, Virginia